

Appendix Exhibit 7

Arbitration Transcript 7/2/09 with exhibits

R000759-R000955

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

- - -

In the matter of the)
arbitration involving:)
)
BUILDING AND CONSTRUCTION)
LABORERS LOCAL UNION NO. 310,)
) Case Number:
Claimant,) 53 300 E 00098 09
and)
UNIVERSITY HOSPITALS HEALTH) Volume III
SYSTEMS, INC., et al.,)
Respondents.

- - -

BE IT REMEMBERED, that upon the hearing of
the above-entitled matter, held at Doubletree
Hotel, 1111 Lakeside Avenue, Cleveland, Ohio,
before Marvin J. Feldman, Impartial Arbitrator,
and commencing on Thursday, the 2nd day of July,
2009, at 10:00 o'clock a.m., at which time the
following proceedings were had.

- - -

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330-666-9800

330-452-2400

216-621-6969

R000759

1 **APPEARANCES:**

2

3 On Behalf of the Claimant:

4 GOLDSTEIN GRAGEL, LLC

5 BY: Susan L. Gragel, Attorney at Law

6 Ami Banderyt, Attorney at Law

7 1040 The Leader Building

8 526 Superior Avenue, East

9 Cleveland, Ohio 44114-1401

10 216/771-6633

11

12 On Behalf of the Respondents:

13 VORYS, SATER, SEYMOUR AND PEASE, LLP

14 BY: David A. Campbell, Attorney at Law

15 Charles F. Billington, III

16 Attorney at Law

17 2100 One Cleveland Center

18 1375 East Ninth Street

19 Cleveland, Ohio 44114-1724

20 216/479-6179

21

22 Also Present: Mike Harting

23 Sebastian Trusso

24

25

1 I N D E X

2

3

4 ON BEHALF OF THE UNION:

5 WITNESSES: DIR CROSS RED. REC. FRC

6 MICHAEL HARTING 324 360

7 ANTOIN ELEY 405 412 429

8 MICHAEL FERRITTO 434 440

9

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11 RESPONDENT EXHIBITS

12 PAGE

13 Number 7 378

14

15 UNION EXHIBITS

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17 Number 4 338

18 Number 5 359

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1 **MR. FELDMAN:** You may begin.

2 **MS. GRAGEL:** By way of a brief
3 opening statement, Mr. Feldman, on behalf of
4 Local 310, along with the evidence presented at
5 the first and second days of the arbitration
6 hearing for cross-examination, Local 310 expects
7 the evidence to show that University Hospitals
8 breached the Project Labor Agreement by acting
9 as if it were the employer/contractor of 310's
10 members, including Mike Harting.

11 In this capacity, University
12 Hospitals discharged Local 310's member, Mike
13 Harting, without just cause. University
14 Hospitals having usurped the role of the
15 contractor/employer is, therefore, liable for
16 the wages and benefits that Mr. Harting would
17 have earned if he had not been removed from the
18 workplace by University Hospitals.

19 The evidence will show that
20 Mr. Harting has been a construction laborer for
21 approximately 30 years. As an experienced
22 laborer, he has functioned successfully at many
23 construction projects, and there will be
24 testimony about the kind of work he's done and
25 the places he's worked over his career. He's

1 worked as a foreman, he's worked as a union
2 steward.

3 Between 2005 and the fall of 2008,
4 Mr. Harting was the steward at the Case Western
5 Reserve Animal Health Building project which was
6 next door to the University Hospitals project
7 that gives rise to this arbitration. Three to
8 five times per week during that time of his
9 working career Mr. Harting purchased and ate his
10 meals in the University Hospitals' atrium
11 cafeteria that gives rise to this proceeding.
12 The Animal Health Building was completed in
13 November 2008 and Mr. Harting was laid off.

14 In January 2009, he was called to
15 employment at the University Hospitals Neonatal
16 Intensive Care project, the NICU project, and
17 assigned as the second shift steward. He
18 continued to eat his evening meals in the atrium
19 cafeteria of University Hospitals. No one told
20 him not to do so. Other tradesmen continued to
21 eat in the cafeteria throughout the day shifts
22 and the evening shifts. This will be confirmed
23 in the testimony here today by Mike Ferrito who
24 was the head labor steward working primarily on
25 the day shifts at the project.

1 There was a rather dingy break room
2 on one of the floors of the NICU unit when
3 Mr. Harting first arrived at the project in
4 early January 2009. It was seldom, if ever,
5 used. But by January 27, 2009, the date that
6 gives rise to this case, there was no break room
7 because that room had been demo'd out as part of
8 the rebuilding of that section of University
9 Hospitals.

10 Mr. Harting will then provide
11 evidence about some of his personal habits and
12 behaviors. He maintains his family budget by
13 taking ten dollars, no more, no less, to work
14 with him every day. At this site, he received
15 free parking at the Ozanne trail, so ten dollars
16 was enough.

17 So on January 27th, he had his
18 regular coffee break in the atrium cafeteria at
19 about 4:00 p.m., then he had dinner in the same
20 cafeteria with one or more of his co-workers,
21 including Antoin Eley who is here to testify
22 today. Dinner was at about 7:00 p.m. The
23 cafeteria was not busy at that time. Mr. Eley
24 arrived at the cafeteria first and went through
25 the line seating at a table about two rows back

1 from the cafeteria cashier's line. Mr. Harting
2 selected ten wings and a soda. It costs \$5.80.
3 When he reached the cashier, Lattisia Hanson, he
4 gave her all the money in his wallet, ten
5 dollars which at that time was two five dollar
6 bills. The cashier was talking with another
7 cashier worker which was inside the cashier area
8 on the other side of the rail. She gave him 20
9 cents change. Mr. Harting asked her for the
10 four dollars. Mr. Harting will describe what
11 happened next. She became defensive. She
12 seemed nervous. He continued to ask her for the
13 money back. She said she was calling her
14 manager, and he waited for a minute or so at the
15 line until the manager came over.

16 At no time during any of the contacts
17 with Ms. Hanson or with the manager who came a
18 minute or so later did Mr. Harting ever use
19 racially derogatory terms or profanity. Then,
20 sir, there will be testimony about what happened
21 next over the rest of that day, over the next
22 few days.

23 On the following day, on January
24 29th, Mr. Harting ate in the cafeteria without
25 incident. On January 29th, he received a coupon

1 back from the cafeteria manager, who told
2 Mr. Harting, according to the evidence that will
3 be presented today, this was being given to make
4 things right.

5 So then the evidence will demonstrate
6 as you've heard over the last few days that
7 University Hospitals, based on false information
8 from Ms. Hanson, without investigation,
9 terminated Mr. Harting from his employment at
10 the work site in violation of the Project Labor
11 Agreement.

12 Mr. Harting was damaged. As we sit
13 here today, the evidence will show there was
14 work ongoing at that part of the project where
15 he worked. Mr. Harting will describe his
16 employment history and the damages that he would
17 seek to have awarded in the event he prevails
18 with the union on this arbitration. So with
19 that, Mr. Feldman, I'm prepared to call the
20 union's first witness.

21 MR. FELDMAN: You may proceed.

22 MS. GRAGEL: Mr. Harting.

23 MR. FELDMAN: Have a seat,

24 Mr. Harting. Mr. Harting, you've been

25 previously sworn in this matter when called upon

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1 direct examination by the company. Are you
2 aware of that swearing in?

3 MR. HARTING: Yes.

4 MR. FELDMAN: Do you continue to
5 abide by that?

6 MR. HARTING: Yes.

7 MR. FELDMAN: For the record,
8 state your name.

9 MR. HARTING: Michael J. Harting,
10 H-a-r-t-i-n-g.

11 MR. FELDMAN: Do you understand
12 you're under oath?

13 MR. HARTING: Yes.

14 MR. FELDMAN: You may inquire.

15 MIKE HARTING

16 of lawful age, a witness herein, was examined
17 and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. GRAGEL:

20 Q. Mr. Harting, I have some questions for you
21 about your personal background.

22 Where do you live, sir?

23 A. I live in Mentor, Ohio. 7246 Culver
24 Boulevard.

25 Q. And how long have you lived there?

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- 1 A. Roughly 27 years.
- 2 Q. Are you married?
- 3 A. Yes.
- 4 Q. What's your wife's name?
- 5 A. My wife's name is Darlene.
- 6 Q. How long have you and Darlene been married?
- 7 A. Twenty-eight years.
- 8 Q. Do you have children?
- 9 A. I have two children.
- 10 Q. What are their names?
- 11 A. Michael and Erin.
- 12 Q. How old is Michael?
- 13 A. Michael is 20.
- 14 Q. And is that Erin --
- 15 A. E-r-i-n.
- 16 Q. That would be a daughter?
- 17 A. Yes.
- 18 Q. How old is your daughter?
- 19 A. She is 23.
- 20 Q. Do you have grandchildren?
- 21 A. I have one grandchild.
- 22 Q. What is your occupation?
- 23 A. I am a laborer.
- 24 Q. How long have you been a laborer?
- 25 A. I've been laborer 27 years.

1 Q. Are you a member of Local 310?

2 A. Yes, I am.

3 Q. How long have you been a member of Local
4 310?

5 A. Twenty-seven years.

6 Q. You've been here throughout the two earlier
7 days in this arbitration, correct?

8 A. Yes, I have.

9 Q. And you've heard all of the witnesses
10 testify?

11 A. Yes, I have.

12 Q. During those days, there's been testimony
13 about laborers, but I don't think anyone has
14 really described what a laborer does.

15 For the record, would you briefly describe
16 the work of a laborer?

17 A. A laborer is basically we are tending
18 different crafts, bricklayers, carpenters, we do
19 a lot of demo cleanup. Basically, we abide by
20 the contract that our local union has set up.

21 Q. I have some more questions for you about
22 what you do and what you've done as a laborer,
23 but let me move over to another subject for a
24 minute.

25 Besides your employment as a laborer, do

1 you have a secondary occupation?

2 A. Yes, I do.

3 Q. What is your secondary occupation?

4 A. I coach wrestling and football.

5 MR. FELDMAN: You what?

6 THE WITNESS: Coach wrestling and
7 football at Mentor High School.

8 BY MS. GRAGEL:

9 Q. How long have you been a coach, sir?

10 A. I've been a coach at Mentor for nine years.
11 I was a coach at Mayfield for 19, and for
12 St. Joe's for four.

13 Q. And what age level students do you coach?

14 A. Right now I'm with the ninth graders for
15 football at Mentor. For the wrestling, I was
16 varsity -- varsity assistant coach, so that's
17 ninth through twelfth.

18 Q. Coming back, sir, to your main occupation
19 as a laborer, have you worked in the course of
20 your career as a laborer's Local 310 steward?

21 A. Yes, I have.

22 Q. What does a steward do?

23 A. The steward basically tries to abide by
24 what the contract is written out. We try to
25 specify, work a lot on safety issues, but mostly

1 watching the job, making sure that hours are
2 turned in for the laborer who works and stuff
3 like that.

4 Q. During the course of your working career as
5 a laborer, have you worked as a laborer/foreman?

6 A. Yes, I have.

7 Q. What does a laborer/foreman do?

8 A. Laborer/foreman is basically to specify to
9 the laborers underneath you what to do, how to
10 do it and basically run the labor part of the
11 job.

12 Q. Would you describe for the arbitrator some
13 of the projects that you have worked at as a
14 laborer; and if you worked there as a steward or
15 a foreman, would you tell the arbitrator that,
16 too?

17 A. I worked at Progressive Field, which was
18 then called Jacob's Field. I was the general
19 foreman there. I was there for probably two
20 years and maybe a couple months. I ran all the
21 brick work and block work and all the stone
22 work.

23 I've been a labor steward for Mr. Lerner on
24 his residence for three years. I've worked at
25 Ben Venue as a steward. I worked at St. Francis

1 of Assisi as a steward. I worked at Higley
2 Company as a steward in their warehouse and a
3 lot of other littler jobs.

4 Q. You talked, sir, about working for
5 Mr. Lerner at the residence. When did you work
6 on that job?

7 A. That job was completed -- it started in
8 2000. It was completed in 2003 or early '4. I
9 basically had three years there.

10 Q. And how big was the residence?

11 A. We were told not to ever talk about the
12 specifics of the job.

13 Q. Did you work there after the owners took
14 occupancy?

15 A. Yes.

16 Q. Did you work both inside and outside the
17 Lerner residence?

18 A. Yes.

19 Q. Did you work there after Mr. Lerner passed
20 away?

21 A. Yes, I did.

22 Q. Did you come to know Mrs. Lerner?

23 A. Yes, I did.

24 Q. In order to work, sir, on that job, did you
25 need to pass security clearance?

1 A. Yes, we did.

2 Q. Have you had to have security clearance on
3 other jobs where you worked?

4 A. Yes, because I also was at the Federal
5 Reserve Bank.

6 Q. When you testified here at the last hearing
7 on June 9th, sir, you said that the union
8 instructed you to act as a gentleman.

9 Did you receive specific instructions from
10 the union on that subject?

11 A. No.

12 Q. When you gave that testimony, what were you
13 referring to?

14 A. Well, I perceived -- the proper way to act
15 accordingly to the situation, you know, to
16 basically be nice to people and to do what you
17 have to do.

18 Q. And did you receive those kinds of
19 instructions when you were called to work at the
20 Lerner residence?

21 A. Yes.

22 Q. From whom?

23 A. From our business agent.

24 Q. And who was that?

25 A. Mr. Trusso and John Gilbane.

1 Q. Did you, sir, work at the Case Western
2 Reserve Animal Health Building?

3 A. Yes.

4 Q. When did you work there?

5 A. 2005 to 2008.

6 Q. And what was your position at that site?

7 A. I was the steward.

8 Q. And where was that project in relation to
9 the University Hospitals Rainbow Babies and
10 Children's Building?

11 A. It is across the street.

12 Q. When you worked at the Case Animal Health
13 Building, where did you take your breaks and
14 your meals?

15 A. Usually we took them at the University
16 cafeteria.

17 Q. And is that the same atrium cafeteria that
18 has been the subject of the testimony in this
19 arbitration?

20 A. Yes, it is.

21 Q. Now, I know you've testified before in the
22 earlier hearings, and I'm not going to ask you
23 to repeat that testimony, but for point of
24 reference, about when did you begin work at the
25 University Hospitals Neonatal Intensive Care

1 Unit job?

2 A. It was either the 7th or the 8th of
3 January.

4 Q. What shift were you assigned to work?

5 A. Second shift.

6 Q. Were you designated as the second shift
7 steward?

8 A. Yes, I was.

9 Q. Did you receive a badge?

10 A. Yes, I did.

11 Q. Now, after you started work, what was your
12 break time for second shift?

13 A. Break time -- our coffee break was roughly
14 around 5:00, and then lunch break was anywhere
15 between 7:00 to 7:30, whenever we caught a break
16 in what we had to do.

17 Q. Where did you take your breaks?

18 A. We took our break in the cafeteria.

19 Q. Where did you eat your meals?

20 A. In the cafeteria.

21 Q. When you were having your breaks or meals
22 in the cafeteria, did you see other construction
23 workers in the cafeteria?

24 A. Yes.

25 Q. Did anyone before January 27, 2009 ever

1 instruct you not to eat in the cafeteria?

2 A. No.

3 Q. Did you, sir, from time to time receive
4 employee discounts or some type of discounts
5 when you purchased food?

6 A. I don't know, but it could have been.

7 Q. Was there an area in University Hospitals
8 for laborers to use to eat meals or to drink
9 coffee other than the cafeteria when you got to
10 the site?

11 A. There was a break room on the fourth floor
12 that served as a break room and like a storage
13 room.

14 Q. Did you, when you got to the job, take any
15 of your breaks or meals in that room?

16 A. Never.

17 Q. Why not?

18 A. Because it was cramped and there were all
19 sorts of working materials around and everything
20 like that.

21 Q. On January 27, 2009, sir, did that break
22 room still exist?

23 A. No.

24 Q. What happened to it?

25 A. We gutted it out to put a new Neonatal

1 Intensive Care Unit.

2 Q. During your career, sir, as a laborer, did
3 you have any habit about the kind of money that
4 you took to work every day?

5 A. My wife put me on a strict budget of ten
6 dollars a day.

7 Q. So, sir, I'd like to turn your attention to
8 January 27th, 2009, which is the date that
9 underlies our grievance here. How much money
10 did you take to work?

11 A. I took two fives.

12 Q. What time of your workday was it when you
13 took your dinner break?

14 A. It was roughly around 7:00.

15 Q. Did anybody go to eat with you?

16 A. I don't remember his name, but Mark -- we
17 call him Mark the fireman, and Antoin.

18 Q. Who, if anyone, went through the line with
19 you?

20 A. I was probably behind him by about maybe
21 100 feet or so, so they had already gotten
22 through the line before I came in.

23 Q. What did you buy to eat that night?

24 A. I'm pretty sure I bought ten chicken wings
25 and a Coke.

1 Q. What was the cost of your meal?

2 A. It was \$5.80.

3 Q. At the last hearing Ms. Lattisia Hanson
4 testified. Do you remember that?

5 A. Yes, I do.

6 Q. Did you know her name before last week?

7 A. No, I did not.

8 Q. Was she your cashier on January 27th?

9 A. Yes, she was.

10 Q. When you got to the food line that night,
11 was the cafeteria busy or not busy?

12 A. Not busy.

13 Q. Was anyone in line besides you?

14 A. I do not think so.

15 Q. When you got to the checkout line, was
16 Ms. Hanson alone or was she with someone else?

17 A. There was another gentleman standing next
18 to her in another line.

19 Q. What was she doing?

20 A. She was talking to him while she was
21 ringing things up.

22 Q. You said your meal cost was \$5.80. What
23 money did you give to the cashier?

24 A. I gave her my two fives.

25 Q. What did you receive back?

1 A. I received 20 cents back.

2 Q. What happened next?

3 A. I said, "You are mistaken. You gave me the
4 wrong change. You owe me four dollars and 20
5 cents."

6 Q. What, if anything, did Ms. Hanson say?

7 A. Ms. Hanson said, "No, I didn't, sir."

8 I said, "I know I gave you two fives," and
9 she started getting real defensive and fumbling
10 with the money in the cash register drawer. And
11 then she said again, "No, I didn't, sir."

12 Q. Was there anyone in line behind you at this
13 time, if you remember?

14 A. No.

15 Q. Did the subject of getting the manager come
16 up during the conversation?

17 A. Yeah. She said, "I'm going to have to talk
18 to my manager."

19 I said, "Go ahead."

20 Q. Did he come right away?

21 A. He came probably within a minute.

22 Q. Where did you go while --

23 A. I stayed in line because there was no one
24 else in line behind me.

25 Q. While you were waiting, did you continue to

1 talk to Ms. Hanson?

2 A. I just said, "You gave me the wrong
3 change," and that's what -- she kept on fumbling
4 and kind of getting boisterous.

5 MR. FELDMAN: I'm sorry, repeat
6 that.

7 THE WITNESS: She started talking
8 louder to me as she fumbled with the money.

9 BY MS. GRAGEL:

10 Q. Did the manager come?

11 A. Yes, he did.

12 Q. Do you know the manager's name?

13 A. Devan, I think.

14 Q. Can you describe what he looked like?

15 A. Younger kid, blond hair.

16 Q. What happened when you got to the counter
17 or the cashier's --

18 A. By this time there were people coming in
19 the line. We stepped to the side.

20 Q. Who spoke first?

21 A. He wanted to know what the problem was and
22 I told him.

23 Q. Did Ms. Hanson speak to him that you heard?

24 A. Not that I remember.

25 Q. When you talked to the manager, what did

1 you tell him?

2 A. I said that she gave me the wrong change;
3 she's a thief.

4 Q. Why did you use that word?

5 A. Because she got -- as soon as I questioned
6 her at it, she got real defensive and started
7 putting the money back in the drawer and playing
8 with the money.

9 Q. Did you, in speaking to the manager, sir,
10 at any time use the word "fuck"?

11 A. No.

12 Q. Did you use the word "fucking"?

13 A. No.

14 Q. Did you at any time use the term "nigger"?

15 A. No.

16 (Thereupon, Union Exhibit 4 was
17 marked for purposes of
18 identification.)

19 BY MS. GRAGEL:

20 Q. Mr. Harting, as part of preparing for this
21 arbitration, did you have the opportunity to
22 review the video that was submitted by
23 University Hospitals in response to the
24 subpoena?

25 A. Yes.

1 Q. And that was the video that was played here
2 on my laptop at the last hearing?

3 A. Yes.

4 Q. Since we were here last, I had some still
5 shots made of excerpts of the video. Have you
6 also had a chance to review these with me?

7 A. Yes.

8 Q. Each of these shots, sir, has a number in
9 the upper left corner. Do these compare to the
10 tracking numbers at the bottom corner of each
11 frame of that video?

12 A. Yes.

13 Q. In Exhibit 4, sir, would you turn to the
14 first photo which is tagged with 19 seconds? Do
15 you see that?

16 A. Yes.

17 Q. Are you in that photo?

18 A. Yes.

19 Q. Where are you?

20 A. I'm in the upper left. That's my stomach.
21 (Indicating.)

22 Q. What color is your shirt?

23 A. It would be white.

24 Q. And is that your slim stomach that I see in
25 the upper left corner?

1 **A.** Yes, it is.

2 **Q.** There is a window-looking area with a
3 circle in it, do you see that?

4 **A.** Yes.

5 **Q.** Is Ms. Hanson behind the window?

6 **A.** Yes, she is.

7 **MR. FELDMAN:** This person right
8 here?

9 **THE WITNESS:** Yes. This is
10 Ms. Hanson and this is me. (Indicating.)

11 **MR. FELDMAN:** This is Ms. Hanson,
12 this person with black hair?

13 **THE WITNESS:** Yes.

14 **BY MS. GRAGEL:**

15 **Q.** You testified that there was an individual
16 in the cashier area to whom she was speaking?

17 **A.** Yes.

18 **Q.** Where is that individual?

19 **A.** Right to her right. He is standing up.

20 **Q.** Before I leave this picture, sir, in the
21 bottom right corner there's an African-American
22 male with a light-colored shirt seated.

23 **A.** Yes.

24 **Q.** Do you know that person?

25 **A.** I don't know him as a name, but we always

1 talk because he coaches Glenville like I do at
2 Mentor.

3 Q. Would you then, sir, turn with me to the
4 next frame which is the photo taken at 20
5 seconds? Do you see that?

6 A. Yes.

7 Q. What does this show?

8 A. This shows me standing at the cashier and
9 talking to her.

10 Q. Nothing changed much than in the last
11 picture?

12 A. Nothing changed much.

13 Q. Again, sir, the next ones are frames 22 and
14 23. What do you see in those photos?

15 A. Nothing, just still talking -- the man THAT
16 she was talking to on her right is now walking
17 away.

18 Q. In what frame, sir?

19 A. That would be 23.

20 Q. What is depicted in frame 30?

21 A. Me talking to her again.

22 MR. CAMPBELL: Just so -- is this
23 frame 30 or 30 seconds?

24 THE WITNESS: Thirty seconds.

25 MR. CAMPBELL: Are you taking out

1 seven frames or is this 30 seconds?

2 MS. GRAGEL: Thirty seconds.

3 MR. CAMPBELL: I think the record
4 should be clear because if it's frame 30 then
5 we've taking out seven frames, so it's 30
6 seconds.

7 MS. GRAGEL: Yes.

8 And for the record, Mr. Arbitrator,
9 if I have at any time misspoken and referred to
10 them by numbers, it is a shorthand way of saying
11 seconds.

12 BY MS. GRAGEL:

13 Q. Skipping ahead to the next photo in Union
14 Exhibit 4 is one marked at one minute, 30
15 seconds.

16 MR. FELDMAN: What did we have
17 for 30?

18 MS. GRAGEL: I'm sorry.

19 BY MS. GRAGEL:

20 Q. In the photo at 30 seconds, are you
21 depicted?

22 A. Yes, I am.

23 Q. Where are you?

24 A. I'm still in the left-hand corner.

25 Q. From what you see in this picture, was

1 anyone in line with you?

2 A. No.

3 Q. Was anyone in the cashier area talking to
4 Ms. Hanson?

5 A. No.

6 Q. Is that Ms. Hanson, as far as you know,
7 with her back towards you?

8 A. Yes.

9 Q. Is that where she stayed throughout this
10 video?

11 A. Yes.

12 Q. Again, sir, in the frame marked one minute,
13 30 seconds, do you see yourself in the photo?

14 A. Yes.

15 Q. Where are you?

16 A. I am still in the left-hand corner.

17 Q. What, if you know, were you doing at that
18 time?

19 A. I was still trying to tell her that she
20 still owed me four dollars.

21 Q. Had the manager come into the conversation
22 yet?

23 A. No.

24 Q. The next photo in Exhibit 4, sir, is at one
25 minute, 56 seconds.

- 1 A. Yes.
- 2 Q. Are you in the photo?
- 3 A. Yes, I am.
- 4 Q. Where are you, sir?
- 5 A. I'm on the left-hand side.
- 6 Q. Is Ms. Hanson in the photo?
- 7 A. Yes.
- 8 Q. Has her position changed?
- 9 A. No, she's still sitting there.
- 10 Q. What were you doing at this time?
- 11 A. I was waiting for the manager to show up.
- 12 Q. Was there any conversation going on between
- 13 you and Ms. Hanson at that time?
- 14 A. I don't think so.
- 15 Q. Turning ahead in the book, sir, to the
- 16 frame at two minutes, 21 seconds, what is
- 17 depicted in this photo?
- 18 A. I am talking to the manager now. He is
- 19 standing behind her.
- 20 Q. Again, sir, skipping ahead to the frame
- 21 from two minutes, 31 seconds, what is shown in
- 22 that photo?
- 23 A. Me and him still talking.
- 24 Q. Turn to the frame from two minutes, 35
- 25 seconds. What is shown in that picture, sir?

1 **A.** I moved off to the side and he came out
2 because someone was coming up behind us.

3 **MR. FELDMAN:** The cashier is
4 gone? Is the cashier still there?

5 **THE WITNESS:** The cashier is
6 still there.

7 **MS. GRAGEL:** Can you point out
8 for the arbitrator where --

9 **THE WITNESS:** She's still right
10 here. (Indicating.)

11 **MR. FELDMAN:** I thought you said
12 that was the manager.

13 **THE WITNESS:** No, the manager is
14 next to him right here. The thin guy is the
15 manager(Indicating.)

16 **MR. FELDMAN:** I'm looking at
17 2:31.

18 **THE WITNESS:** 2:31, this man with
19 his back is the manager, and you can see the top
20 of her head over her right shoulder.

21 **MR. FELDMAN:** I got you.

22 **BY MS. GRAGEL:**

23 **Q.** To catch up again, sir, would you turn to
24 2:35, two minutes, 35 seconds, where is the
25 manager?

1 A. Me and the manager are moving off quickly
2 to the right to talk.

3 Q. And the Caucasian individual with the white
4 shirt in the upper left corner, is that the
5 manager?

6 A. Yes, it is.

7 Q. Ms. Hanson continued to be seated in the
8 cashier's area?

9 A. Yes.

10 Q. Would you turn with me then to the frame
11 from two minutes, 38 seconds?

12 A. Yes.

13 Q. Is that you?

14 A. Yes.

15 Q. Who were you speaking to?

16 A. I was speaking to the manager.

17 Q. What do you remember saying to him at that
18 time?

19 A. He said, "Sir, I will look into it," and I
20 pointed and said, "You better look into it."

21 Q. Did you ever in the conversation use the
22 phrase "bullshit"?

23 A. Yes, I did. I said, "This is bullshit."

24 Q. Is this the time in the conversation when
25 you remember using that word?

1 **A.** Yes, it is.

2 **Q.** Did you use the word at any other time?

3 **A.** No, I did not.

4 **Q.** Earlier, sir, you talked about the coach
5 from Glenville. Is that him in the bottom right
6 corner?

7 **A.** Yes, it is.

8 **Q.** Do you draw any significance from the way
9 he is seated in the photo --

10 **MR. CAMPBELL:** I'm going to
11 object. I object to asking this person to draw
12 significance from somebody else that's in the
13 photo other than him.

14 **MR. FELDMAN:** You may make your
15 argument.

16 **BY MS. GRAGEL:**

17 **Q.** From this photo, sir, from your review of
18 the video, did the individual in the upper right
19 corner ever react to you?

20 **A.** Upper right corner?

21 **Q.** Bottom right corner.

22 **A.** No, he never reacted.

23 **Q.** Did you raise your voice when you talked to
24 the manager in this section at two minutes, 38
25 seconds?

1 **A.** No.

2 **Q.** Turn, then, sir, with me to the frame two
3 minutes, 48 seconds. What do you have in your
4 hand?

5 **A.** I think I have what's left of my thing and
6 I have a Coke by my belly.

7 **Q.** Were you talking to anyone?

8 **A.** I think I was just talking to the manager
9 as I walked away.

10 **Q.** Would you then look at the frame from two
11 minutes, 42 seconds? What is shown there, sir?

12 **A.** I'm -- if you see, I have the -- I'm eating
13 what I'm supposed to eat and I'm talking to
14 Antoin, who was over here and -- (Indicating)

15 **Q.** When you say "over here," where is Antoin?

16 **A.** Antoin would be over here. He would
17 probably be at the next table. (Indicating.)

18 **Q.** That was your co-worker?

19 **A.** Yes.

20 **Q.** And the table he would have been sitting at
21 is off camera?

22 **A.** Yes, it is.

23 **Q.** What did you do after you walked off
24 camera, sir?

25 **A.** We sat down, we ate at our break and we

1 went back to work.

2 Q. Did you talk to Antoin about what happened?

3 A. I just said, "The lady tried to steal four
4 dollars from me."

5 Q. Did you use any profanity when you talked
6 to Antoin Eley about this incident?

7 A. No.

8 Q. Did you talk to anyone else before you left
9 the cafeteria?

10 A. I don't think so.

11 Q. Where did you go next?

12 A. We went back to work.

13 Q. Anything unusual happen for the rest of
14 your shift?

15 A. No.

16 Q. Did you go to work the next day which would
17 have been January 28th?

18 A. Yes, I did.

19 Q. Where did you have dinner?

20 A. In the cafeteria.

21 Q. Anything unusual happen in the cafeteria?

22 A. Not on that day, no.

23 Q. Did you return to the cafeteria on what
24 would be the next day, January 29th?

25 A. Yes, I did.

1 Q. What, if anything, happened in the
2 cafeteria on that day?

3 A. On this day, the manager came over and took
4 my money and the cashier just backed away and I
5 gave the money to the manager.

6 Q. When you say "cashier," do you mean
7 Ms. Hanson?

8 A. Yes, I do.

9 Q. And when you say "manager," was it the same
10 manager that you had been speaking with in the
11 photographs?

12 A. Yes, it was.

13 Q. What happened next?

14 A. After I paid, he came up to me and handed
15 me a five dollar coupon.

16 Q. What did he say to you?

17 A. He said, "I hope everything is cool."
18 And I said, "Not a problem."

19 Q. What did you do next?

20 A. I went down and sat down.

21 Q. Did you finish your meal?

22 A. Yes, I did.

23 Q. Anything unusual happen that day?

24 A. No.

25 Q. Did you go back to the cafeteria on the

1 next day, which would be January 30th?

2 A. Yes.

3 Q. What, if anything, happened on that day?

4 A. I was eating. This time I was either late
5 or early because I was by myself, and I think
6 the guy's name is Mr. Hawk, the head manager,
7 walked over to me and he shook my hand, he sat
8 down and he said, "I heard there was a problem
9 here," and I explained to him my side. And then
10 he -- I said, "Are you kicking me out?"

11 He said, "We would feel more comfortable if
12 you didn't eat here anymore."

13 And I said, "Okay," and I got up and I
14 walked out.

15 Q. Sir, I'd like to direct your attention to
16 February 2nd, 2009. Do you recall that as being
17 the day that you were contacted by Gilbane and
18 asked to leave the work site?

19 A. Yes, I was.

20 Q. What happened?

21 A. I was working in one of the NICU units and
22 I got a telephone call from Mr. Trusso telling
23 me to go down to Ozanne's trailer.

24 MR. FELDMAN: What was the date?

25 BY MS. GRAGEL:

1 Q. Do you recall that, sir, as being
2 February 2, 2009?

3 A. February 2nd.

4 Q. Did you go to the Ozanne trailer?

5 A. Yes, I did.

6 Q. Did anyone go with you?

7 A. No.

8 Q. Who did you see at the Ozanne trailer?

9 A. I think his name was Gallata.

10 Q. Gallata?

11 A. I think.

12 Q. His first name is Tony?

13 A. Yeah, from Ozanne.

14 Q. Did Mr. Tony Gallata from Ozanne speak with
15 you?

16 A. Yes, he did.

17 Q. What did he say?

18 A. He said, "I heard there is a problem. They
19 want to see you in Gilbane's trailer."

20 Q. What happened next?

21 A. We walked over to the trailer where we met
22 Pat Tomy and Todd -- I don't know what his last
23 name is.

24 Q. Todd Gerber?

25 A. Todd Gerber, yeah.

1 Q. What happened when you got to the Gilbane's
2 trailer?

3 A. I explained to them what happened, and they
4 said, "Well, we've got to let you go."

5 Q. Did you leave the job?

6 A. Yes, I did.

7 Q. Did they ask you, sir, if you used any
8 racially derogatory terms in the cafeteria?

9 A. No.

10 Q. Did they ask you if you used any profanity
11 in the cafeteria?

12 A. No.

13 Q. Were you present here in the arbitration on
14 January 9th when Mr. Gerber testified?

15 A. Yes, I was.

16 Q. Do you recall, sir, that he testified that
17 he asked you if you knew that you were not to be
18 eating in the cafeteria and you said you knew
19 that?

20 A. I knew that.

21 Q. Did you have that discussion with
22 Mr. Gerber on February 2nd?

23 A. On February 2nd -- on February 2nd he said
24 it's in some sort of minutes or something that
25 we are not allowed to go down there.

1 Q. Did you know that before January 27th,
2 2009?

3 A. No, I did not.

4 MR. FELDMAN: I don't think this
5 is an incident in which the grievant is
6 indicated to be really a persona non grata
7 because he was eating in the cafeteria. The
8 situation that the owner was concerned with is
9 an alleged violation of really rules of civility
10 which were deemed to be use of the word "nigger"
11 and use of the word "fucking" and use of the
12 word "thief" rather than a situation in which
13 the man was removed from the premises by virtue
14 of his eating in the cafeteria. That would be
15 an easy problem because there are plenty of
16 other things in the cafeteria, and picking and
17 choosing this particular individual wouldn't cut
18 it, so let's just talk about the swearing and
19 defamation, et cetera.

20 BY MS. GRAGEL:

21 Q. You were present, sir, for the testimony of
22 Ms. Lattisia Hanson, do you remember that?

23 A. Yes, I was.

24 Q. She testified at the prior hearing that you
25 told her that you had given her fucking ten

1 dollars. Did you say that to her?

2 A. No, I did not.

3 Q. What did you say?

4 A. I said, "I gave you two fives."

5 Q. She testified, sir, that you commented
6 after she told you that she had to get her
7 manager to the effect of "Go get your fucking
8 manager." Did you say that?

9 A. No, I didn't.

10 Q. What did you say?

11 A. "Go get your manager."

12 Q. She testified that you told the manager
13 that she was a fucking thief. Did you say that?

14 A. I said she was a thief.

15 Q. She testified that you said on that day,
16 "Give me my fucking money." Did you say that?

17 A. No.

18 Q. She also testified, sir, that you said,
19 "You are going to give me my fucking money."
20 Did you say that?

21 A. No.

22 Q. Ms. Hanson testified that you said, "This
23 nigger is not going to take my fucking money."
24 Did you say that?

25 A. No.

1 Q. In the written statement that she made on a
2 date after January 27th that's been admitted
3 into evidence, Ms. Hanson wrote that you said,
4 "Give me my fucking money, you fucking nigger."
5 Did you say that?

6 A. No.

7 Q. Did you say anything like that?

8 A. No.

9 Q. Mr. Harting, I'm putting before you what's
10 been marked as Respondent's Exhibit 1 from the
11 prior hearing. Would you turn, sir, to about
12 the third page of the project code of safe
13 practices? Do you have that?

14 A. Yes.

15 Q. Would you read paragraph 11, sir, to
16 yourself?

17 A. (Witness complies with request.)

18 MS. GRAGEL: Mr. Arbitrator, do
19 you need to see a copy of that?

20 MR. FELDMAN: I'm taking notes.
21 I will also have the transcript. It's more
22 important I hear the witness.

23 BY MS. GRAGEL:

24 Q. This paragraph starts just for point of
25 reference, "I will conduct myself in a

1 professional manner and not engage in violence,
2 horseplay, et cetera."

3 A. Yes.

4 Q. Did you, sir, on January 27, 2009 violate
5 paragraph 11 of the code of safe practices?

6 A. No, I did not.

7 Q. Mr. Harting, I've put before you what's
8 been marked in the prior hearing as Respondent's
9 Exhibit 4. What is that?

10 A. It's an anti-harassment paper.

11 Q. Have you, sir, at any time seen that
12 document before this arbitration?

13 A. No.

14 Q. Did you, sir, on January 27, 2009
15 discriminate against Ms. Lattisia Hanson based
16 on her race?

17 A. No.

18 Q. Did you discriminate against her on the
19 basis of her gender, female?

20 A. No.

21 Q. Did you, sir, on January 27th, 2009 harass
22 Ms. Hanson based on her race?

23 A. No.

24 Q. Did you harass her based on her gender?

25 A. No.

1 Q. I'm handing you what's been previously
2 marked as Respondent's Exhibit 6, and in
3 particular, page 14 of that. Respondent's
4 Exhibit 6 is a University Hospitals Code of
5 Conduct. Did you ever see that before this
6 arbitration?

7 A. No, I have not.

8 Q. What page do you have in front of you?

9 A. Page 14.

10 Q. Page 14, there is a list in Italics of a
11 number of kinds of prohibited conduct such as
12 violence and so forth. Take a minute and read
13 those over. My question, sir, is whether you
14 engaged in any of that conduct on January 27th,
15 2009.

16 A. No, I have not.

17 Q. Sir, after you left the work site on
18 February 2nd, 2009, did you register for work
19 through the Local 310 out-of-work list?

20 A. Yes, I did.

21 Q. How long was it, sir, before you obtained
22 employment, as best you can remember?

23 A. Five or six weeks.

24 Q. Where did you go to work after?

25 A. The Perry Nuclear Power Plant.

1 Q. How long did you work there?

2 A. Roughly five weeks.

3 Q. Were you laid off from that job?

4 A. Yes.

5 Q. How long were you off before you got
6 another job?

7 A. Until the second week of May, so another
8 seven weeks.

9 Q. Where did you go to work then, sir?

10 A. I was working at the Cleveland Institute of
11 Art.

12 Q. And are you still working there?

13 A. No, I just got laid off.

14 Q. And when were you laid off?

15 A. Yesterday.

16 Q. As part of the preparation for this
17 arbitration hearing, did you work with my office
18 to develop a schedule showing the lost wages and
19 benefits for the time between your layoff and
20 the time that you began work out at Perry
21 Nuclear Plant?

22 A. Yes.

23 (Thereupon, Union Exhibit 5 was
24 marked for purposes of
25 identification.)

1 BY MS. GRAGEL:

2 Q. Mr. Harting, does Exhibit 5 represent the
3 calculation of the lost wages and damages that
4 you made for the period between February and the
5 time that you were recalled to work at Perry?

6 A. Yes.

7 Q. As far as you know, sir, was work still
8 going on at the place at University Hospitals
9 where you were working before you were laid off?

10 A. Yes.

11 Q. And if these same calculations were applied
12 to cover the period in which you were laid off
13 after Perry, before you started at the Cleveland
14 Institute of Art, would the same formula hold
15 true?

16 A. Yes.

17 MS. GRAGEL: Mr. Arbitrator,
18 thank you. I'll pass the witness.

19 MR. FELDMAN: You may inquire.

20 CROSS-EXAMINATION

21 BY MR. CAMPBELL:

22 Q. Mr. Harting, I questioned you on two
23 occasions and I don't have too many questions
24 for you today, but I want to ask you a little
25 bit.

1 I've met on several occasions with John
2 Gilbane and Terry Joyce. Are you familiar with
3 those two individuals?

4 A. Yes.

5 Q. And they're some of the elected
6 representatives from Local 310?

7 A. Yes.

8 Q. And I'm familiar with the policies and
9 procedures of 310 in talking with them. I just
10 want to ask you, on the stewards I'm assuming
11 there's training and you have to do something
12 within union before you get the title of
13 steward.

14 A. Yes.

15 Q. And you probably have to go through some
16 training before you get the title of a foreman.

17 A. Yes.

18 Q. And the training for the stewards and the
19 foreman are all through Local 310?

20 A. No, not all of them.

21 Q. Or directed for you to go outside Local
22 310?

23 A. Yes.

24 Q. And the steward and the foremen --
25 certainly as a steward, in looking at the

1 Collective Bargaining Agreement, a steward
2 actually can file grievances on behalf of some
3 of the other laborers, right?

4 A. Yes.

5 Q. So you're familiar with the contract
6 between Local 310 and the Contractor's
7 Association?

8 A. I know there's one, but I don't know
9 exactly --

10 Q. If you're a steward, you understand that
11 you know how to get a copy of the contract?

12 A. Yes.

13 Q. You would know how to find out if there's a
14 grievable offense?

15 A. Yes.

16 Q. If somebody comes to you and says, "Hey,
17 Mike, I think there's a problem," are you just
18 going to say, "I have no idea about the
19 contract," or are you going --

20 A. No, I would probably call my business agent
21 up and find out exactly what the problem is.

22 Q. So you're going to go locate the
23 contractual terms and see if there is a
24 grievable offense?

25 A. Yes.

1 Q. Tell me about the steward training. What
2 type of things did Local 310 either direct you
3 to go to or that you actually did for steward
4 training?

5 A. Most of our steward training is -- once
6 again, safety oriented, and then we try to
7 follow the book as much -- our agreement book as
8 much as possible during different situations.

9 Q. And that's the contract. You're saying the
10 agreement book is your contract?

11 A. The contract with our -- you know, like the
12 carpenter's union and stuff like that. It has
13 nothing to do with --

14 Q. The Local 310 Collective Bargaining
15 Agreement that they've negotiated, right?

16 A. Yes.

17 Q. And then each job site that you go on,
18 you've talked about you were at Progressive
19 Field, you were at the Lerner household, Ben
20 Venue, St. Francis, Higley, Cleveland Institute
21 of Art, Perry Nuclear facility, UH, you were at
22 a number of work sites around the Cleveland
23 area, right?

24 A. Yes.

25 Q. At each of those work sites, some of them

1 like Progressive Field, you weren't necessarily
2 there with employees because Progressive was
3 going from the foundation up, right? You
4 weren't there with people working for
5 Progressive or for Jacob's Field at the time,
6 you were just in construction?

7 A. Yes. At least in the beginning, yes.

8 Q. And like the "Lerner household, you're
9 actually in a household, right?

10 A. Yes.

11 Q. You're on the grounds of a private
12 residence?

13 A. Yes.

14 Q. Grandchildren might be around?

15 A. Yes.

16 Q. The Lerner's might be around?

17 A. Yes.

18 Q. Family and friends?

19 A. Yes.

20 Q. And no different than Ben Venue, you were
21 probably, I'm assuming, doing construction with
22 employees and visitors coming to the Ben Venue
23 site?

24 A. Yes.

25 Q. Cleveland Institute of Art, you had

1 visitors coming in to see the Institute of Art?

2 A. Yes.

3 Q. No different than UH, there's patients,
4 there's visitors, there's other employees coming
5 through the grounds?

6 A. Yes.

7 Q. Now, I'm assuming the steward training, the
8 foreman training and your -- how many years have
9 you been a laborer?

10 A. Twenty-seven.

11 Q. Twenty-seven years, and you've been a high
12 school coach, right?

13 A. Yes.

14 Q. When you go visit another facility, I'm
15 assuming you tell your guys, "Hey, we're going
16 to be professional, we're going to be
17 respectful, and we're going to follow all the
18 rules and be a gentleman," right?

19 A. Yes.

20 Q. If somebody goes into the other gym and
21 acts like a jerk, you're going to take some
22 action, right?

23 A. Yes.

24 Q. And you don't just do that on the high
25 school field, you understand that as a laborer,

1 when you went in the Lerner household, you're
2 going to be a gentleman?

3 A. Yes.

4 Q. You're not going to go in the Lerner
5 household and work with one of their -- if they
6 have a maid or somebody that's working for the
7 Lerner household and call them a thief in the
8 household, are you?

9 A. No.

10 Q. You're going to handle those issues through
11 your process that you have?

12 A. Yes.

13 Q. Right?

14 A. Uh-huh.

15 Q. And the process, you have a grievance
16 process, you have your business agent, you have
17 many avenues to go to 310 to say, "Hey, guys,
18 I've got a problem," right?

19 A. Yes.

20 Q. And I'm assuming you've told your guys and
21 310 and your business agents have told you, have
22 you ever heard of the -- in the union lingo that
23 you work first, grieve later?

24 A. I've never heard it.

25 Q. Let me see if you understand the principle.

1 If you're on the work site and somebody -- a
2 supervisor might tell you something that you
3 don't think is right to the contract, you follow
4 the order unless there's a safety issue and then
5 you go to your B.A. and file a grievance after
6 the fact, right?

7 A. Yes.

8 Q. You don't create a scene and start
9 picketing on the work site? You work first and
10 grieve later, right? Is that right?

11 A. Yes.

12 Q. There's a process to go through, and you
13 follow the process, and your union is there in
14 order to solve those problems, right?

15 A. Yes.

16 Q. Now, at the UH project, you've already
17 testified extensively to me on two occasions
18 that you understood, as no different than at the
19 high school or at the Lerner field or Cleveland
20 Institute of Art, when you were on campus at the
21 UH facility, you were there to act like a
22 gentleman, right?

23 A. Yes.

24 Q. And no different than if I were to visit
25 the facility, I'm not there to yell, scream,

1 cuss, use racial slurs, right?

2 A. Yes.

3 Q. And if you understood that if a visitor
4 such as me or Ms. Gragel or your business agent,
5 anybody who wasn't an employee, if a visitor
6 came on and violated their policies and
7 procedures that they could be excluded. An
8 owner can do that, right?

9 A. Yes.

10 Q. If you go in the Cleveland Institute of Art
11 and you start yelling and screaming, somebody
12 can say, "Hey, you've got to leave."

13 A. Yes.

14 Q. In fact, when they came up to you in the
15 cafeteria and said, "You know what, we can't
16 have that conduct here, you've gotta go," you
17 willingly left?

18 A. Yes.

19 Q. You didn't start yelling and screaming at
20 them?

21 A. No.

22 Q. You said fine? You have the right to say
23 you can leave, right?

24 A. Yes.

25 Q. And I take it from your discussion, you

1 didn't even call the B.A. to say, "Hey, I want a
2 grievance about this."

3 A. No, because I just -- okay, they don't want
4 me in here and I just left.

5 Q. Your testimony is you didn't have anyplace
6 to eat, right?

7 A. I would have went maybe and sat outside or
8 something like that.

9 Q. So here you are, you've been excluded from
10 the cafeteria at this point, all your friends
11 are going to eat in there, you've testified at
12 length you have no other place to eat, they've
13 taken the break room out, all these issues. We
14 don't call the B.A., we don't file a grievance,
15 we don't go to UH, we just simply say "That's
16 fine" and walk away, right?

17 A. Me, yes.

18 Q. No issues. If Gilbane wouldn't have called
19 you in and said, "You know what, we found out
20 about this, we're going to exclude you from the
21 work site," I would bet Ms. Gragel and your
22 business agent would have never known anything
23 about this, would they? You wouldn't have told
24 them.

25 A. I probably would have told him, yes.

1 Q. Well, you didn't tell them before you were
2 excluded from the work site, did you?

3 A. No.

4 Q. Just so I understand you, you come every
5 day with ten dollars.

6 A. Yes.

7 Q. Now, what time did you typical -- when you
8 started -- you didn't start at UH until about
9 three weeks before this incident, right?

10 A. Yes.

11 Q. And you were at the Case site for how many
12 years?

13 A. Three years.

14 Q. Over those three years I think you said you
15 went into the cafeteria quite often?

16 A. Yes.

17 Q. No problems before that?

18 A. No.

19 Q. Nobody stole money from you before that?

20 A. The change was always different, and that's
21 why we always laughed because you have that
22 badge and you don't know if they're giving you
23 the discount or -- we don't know.

24 Q. You didn't start yelling and screaming when
25 the change was different?

1 A. No.

2 Q. No other incidents prior to January 27,
3 right?

4 A. Right.

5 Q. You went into the cafeteria, you acted like
6 everybody else in there, got your food, ate, and
7 didn't make an incident, right?

8 A. Yes.

9 Q. Yet, you were fully familiar with the
10 cafeteria and what was expected of people in
11 that cafeteria?

12 A. Yes.

13 Q. This was three years of using this
14 cafeteria, right?

15 A. Yes.

16 Q. On a regular basis?

17 A. Yes.

18 Q. How many times a week do you think you used
19 it over these three years?

20 A. Five to seven.

21 Q. Five to seven times a week over this time.
22 So you were very familiar with UH campus, right?

23 A. Yes.

24 Q. You knew patients were walking around?

25 A. Yes.

1 Q. You knew Rainbow is right there connected
2 to the atrium, right?

3 A. Yes.

4 Q. And Rainbow is the Children's Hospital,
5 right?

6 A. Yes.

7 Q. I've been in the cafeteria, oftentimes
8 there's kids and their moms and dads there?

9 A. Yes.

10 Q. Kids visiting their relatives or friends
11 who are in the hospital, right?

12 A. Uh-huh.

13 Q. Just say "yes."

14 A. Yes.

15 Q. And this is a very crowded cafeteria. Not
16 all times, but sometimes it's very crowded.

17 A. Yes.

18 Q. And there's all sorts of people, everybody
19 from a UH employee, from a clerical to a doctor
20 to all types of visitors?

21 A. Yes.

22 Q. All types of patients?

23 A. Yes.

24 Q. And throughout all these three years, you
25 didn't go in there and yell and scream, right?

1 A. No.

2 Q. You acted professionally and polite?

3 A. Yes.

4 Q. Even though there were times when you
5 thought, why is my change wrong, right?

6 A. Yes.

7 Q. So now when you come in with ten dollars, I
8 think on the opening I heard that's your typical
9 day, just so I understand the typical day, what
10 time would you get in once you started in
11 January, what time did you start?

12 A. We started about 3:00.

13 Q. So you started at three and worked until
14 when?

15 A. We worked until -- end of the shift.

16 Q. What time would --

17 A. 11:00, 11:30.

18 Q. Take two coffee breaks?

19 A. One coffee break.

20 Q. One coffee break and then you had lunch?

21 A. Yes.

22 Q. What do you bring to the work site? When
23 you came to UH, what did you bring?

24 A. I just bring -- when I come to UH or Case,
25 I just bring my hammer and my tools.

1 Q. So you bring your ten dollars every day for
2 lunch?

3 A. Yes.

4 Q. And you get coffee and you get dinner?

5 A. I drink water in the morning.

6 Q. You drink water in the morning.

7 A. Coffee break.

8 Q. Coffee and dinner is what you get, right?

9 A. Yes.

10 Q. And the atrium is the big cafeteria?

11 A. Yes.

12 Q. And atrium has like an Einstein Bagels?

13 A. Yes.

14 Q. And it has the regular cafeteria that all
15 these pictures show where you can go through the
16 buffet?

17 A. Yes.

18 Q. And you go in the atrium. On this day I
19 heard Ms. Gragel say you went in the atrium and
20 got your coffee and then went back to work?

21 A. I got water.

22 Q. Was Ms. Gragel mistaken when she said you
23 went in there to get coffee?

24 A. It's a coffee break, but I drink water.

25 Q. Where did you get your water? Did you go

1 up there and buy a bottle?

2 A. No, you get it free. If you look at the
3 thing, there's an ice machine with a cup of
4 water.

5 Q. So you're saying Ms. Gragel was mistaken
6 when she said in her opening --

7 A. I call it a coffee break, but I'm trying
8 to --

9 Q. Because if you got coffee, you would have
10 used two of your five dollar bills, right?

11 A. Yes.

12 Q. So Ms. Gragel was right that you got your
13 coffee break before dinner, you wouldn't have
14 had two five dollar bills when you went to
15 dinner, right?

16 A. Yes.

17 Q. But it's your testimony that Ms. Gragel was
18 mistaken that you only got free water, you
19 didn't get coffee?

20 A. Yes, I got free water.

21 Q. So you didn't use your two five dollar
22 bills on coffee, Ms. Gragel is wrong, right?

23 A. Yes.

24 Q. Now, did you see me laugh over here when
25 Ms. Gragel said you had your coffee break first

1 during her opening?

2 A. No.

3 Q. So you got free water. Others got coffee.

4 A. Yes.

5 Q. And you didn't buy any coffee on that
6 break?

7 A. I don't remember. Sometimes I do, but most
8 of the times I don't.

9 Q. So you could have gotten coffee?

10 A. I could have, yes.

11 Q. And if you got coffee, it wasn't free,
12 right?

13 A. Yes.

14 Q. And you would have had to break one of your
15 fives to get coffee?

16 A. Yes.

17 Q. So for sake of argument, if on this day you
18 actually bought coffee, you wouldn't have had
19 two five dollar bills when you went through the
20 cafeteria?

21 A. I wouldn't have, no.

22 Q. You would have had a five and a one?

23 A. Yes, I would have.

24 Q. And 20 cents would have been the correct
25 change?

1 A. It would have been.

2 Q. Who did you have the coffee break with that
3 day?

4 A. Probably Antoin.

5 Q. He's going to be here to testify?

6 A. Yes.

7 Q. So we'll see what he has to say about your
8 coffee break and whether you got coffee or not.

9 On this -- and that was in the cafeteria,
10 no different than your dinner, right?

11 A. Right.

12 Q. Your coffee break or water break?

13 A. Yes.

14 Q. Whatever you got for break was in the
15 atrium.

16 A. Yes.

17 Q. Now, just so I understand the night as it
18 goes, you start work at seven, and about, what,
19 an hour later you have your water/coffee break?

20 A. No, we started working at three.

21 Q. Sorry.

22 A. And at five we went to coffee break and
23 then at 7:00 to 7:30 we went to our lunch break.

24 Q. And then the lunch break what you call
25 lunch, we'll go through it, the photos that

1 Ms. Gragel went through with you, that's your
2 lunch?

3 A. Yes.

4 Q. So now just so I understand the contract,
5 you were the steward and I just want to verify.

6 (Thereupon, Respondent's Exhibit 7
7 was marked for purposes of
8 identification.)

9 BY MR. CAMPBELL:

10 Q. I'm a little surprised we haven't seen this
11 since you're a steward and we have a contract,
12 but you recognize this as the Local 310
13 contract, right?

14 A. Yes, I do.

15 Q. And just look at page 1 first before you
16 start leafing through. Page 1 is we now have a
17 new contract, but this was in effect up until
18 the new contract went into effect just about,
19 what, 30 days ago?

20 A. Yes.

21 Q. Is that right?

22 A. Yes.

23 Q. You understand there was just negotiations,
24 and your B.A. can testify to it, but
25 negotiations about a month ago?

1 A. Yes.

2 Q. This contract was applicable to your
3 employment February 2009 and January 2009,
4 right?

5 A. Yes.

6 Q. And you were a steward so you were
7 explicitly there to help your laborers enforce
8 this contract as well as the Project Labor
9 Agreement, right?

10 A. Yes.

11 Q. Let's look through this contract and verify
12 a couple things. Number one, I want to take you
13 to the article about the steward and verify
14 we're on the same page. It's page 17 and it's
15 Article III, section 16, page 17. Do you
16 recognize that with stewards? See that on the
17 bottom right?

18 A. Steward.

19 Q. Section 16, stewards.

20 A. I don't see where you're seeing it.

21 Q. Page 17 here and 16 in bold "Stewards"?

22 A. Yes.

23 Q. You were a steward at the UH site, correct?

24 A. Yes.

25 Q. You've been a steward for many, many years

1 on many different work sites?

2 A. Yes.

3 Q. And if we look through the steward, there's
4 many duties and obligations and rights that
5 stewards have. And if we look at page 18, one
6 of them is that the laborers have to report the
7 grievances to either the steward, the field
8 representative or the business manager, do you
9 see that on section L, page 18?

10 A. Uh-huh.

11 Q. Is that right?

12 A. Yes.

13 Q. Now, on the steward -- so you obviously
14 were very familiar with this contract or should
15 get familiar if somebody called you, correct?

16 A. Uh-huh.

17 Q. Is that right?

18 A. Yes.

19 Q. Now, I just want to ask you about these
20 points. If we look at on this, and if we turn
21 to page 32, Article XI, section 1, okay, are you
22 with me? Roman numeral XI, "General Provisions"
23 section 1, I'm going to read it and ask if you
24 can verify it. Section 1. "It is expressly
25 understood that working rules, by-laws,

1 conditions, practices or customs, unless same or
2 specifically mentioned in this agreement, shall
3 be interpreted as being a part hereof." Did I
4 read that correctly?

5 A. Yes, you did.

6 Q. And that's what you were talking about when
7 you're on the Lerner site or if you're at the
8 Cleveland Institute of Art, when they have their
9 by-laws, conditions, practices or customs,
10 that's actually part of your 310 contract,
11 right?

12 A. Yes.

13 Q. So when you're there at UH, you were asked
14 about all these points about did UH train you --
15 in fact, your own contract, John Gilbane and
16 Terry Joyce, who negotiated on your behalf
17 actually made those policies and procedures,
18 customs, by-laws, practices, all part of your
19 310 contract and you were obligated to comply
20 with them and so were your other members,
21 correct?

22 MR. FELDMAN: Excuse me. That
23 was page 32?

24 MR. CAMPBELL: Page 32,
25 Article XI, General Provision, section 1.

1 **THE WITNESS:** I don't know
2 because I don't go that much in-depth about
3 everybody else's rules.

4 **BY MR. CAMPBELL:**

5 **Q.** Would you agree that this is saying it is
6 expressly understood that working rules,
7 by-laws, conditions, practices or customs are
8 part of this agreement? Do you see that?

9 **A.** Yes.

10 **Q.** So as a steward, you certainly could have
11 called your B.A. to say, "Hey, I'm going to the
12 UH work site. Let's talk about my duties and
13 obligations and any specific customs or
14 practices," right?

15 **A.** I never have done anything like that, but I
16 suppose, yes.

17 **Q.** When you went to Lerner, your business
18 agent told you about do's and dont's, right?

19 **A.** No. We were brought in in a trailer with a
20 liaison from the Lerner Corporation who told us
21 exactly how to act and what to do.

22 **Q.** From your testimony, I said that your quote
23 was B.A. told you at Lerner.

24 **A.** Yeah, to go out there and work with them.

25 **Q.** The business agent told you, "Be nice to

1 people," the business agent told you, right?

2 A. Yes.

3 Q. So your business agent is going to tell you
4 about, hey, you're going on a site, let's make
5 sure we -- you hear some peculiar rules like,
6 it's confidential, you can't tell people about
7 what we're doing at the Lerner house; is that
8 right?

9 A. Yes.

10 Q. The union is going to tell you those
11 things.

12 So you go on the UH work site. You didn't
13 need to call because you were very familiar with
14 UH, right?

15 A. Yes.

16 Q. You've been in that cafeteria for years?

17 A. Yes.

18 Q. And you knew the rules and procedures and
19 what was expected of you and others when they
20 were eating there?

21 A. Yes.

22 Q. If fact, your contract explicitly made
23 those part of all those rules and procedures,
24 made those part of your obligations under those
25 contracts we just went through, didn't it?

1 **A.** Again, I don't know, you know -- I'm
2 confused here on what -- am I supposed to know
3 the whole book of stuff to do?

4 **MR. FELDMAN:** Answer to the best
5 of your knowledge.

6 **THE WITNESS:** No, not to the best
7 of my knowledge, I don't know what I was
8 supposed to know.

9 **MR. FELDMAN:** Next question.

10 **BY MR. CAMPBELL:**

11 **Q.** Now, let's talk about the night in
12 question, and why don't we pull out -- you've
13 got that three-ring binder again. Let's go
14 through it. I want to verify what we're looking
15 at. So we don't know what happened prior to
16 zero to 19 based on the still photos. If we
17 look at number one, you're already standing at
18 the cash register with 19 seconds on the clock,
19 right?

20 **A.** Yes.

21 **Q.** So we don't know if you had been standing
22 there already 19 seconds or if it just started?

23 **A.** Yes.

24 **Q.** Do you know from Ms. Gragel, do you know if
25 you had already been standing there for 19

1 seconds?

2 A. No, I don't know.

3 Q. So we don't know if this is starting at
4 zero or 19 that you've been there.

5 Now, if we look through the minutes, before
6 the manager came over, let's keep leafing back
7 until we see the manager come into the front.
8 Tell me at what second the manager came into the
9 front.

10 A. 2:21.

11 Q. So 2:21. So you were either at this cash
12 register for two minutes, 21 seconds, or if you
13 just came up in 19 seconds, it was two minutes
14 and two seconds. Can we agree on that?

15 A. Yes.

16 Q. So two minutes and two seconds before the
17 manager came over, at least two minutes you sat
18 there at the cash register with the UH
19 representative, the employee who was sitting
20 there at the cash register, right?

21 A. Yes.

22 Q. So for two minutes you were there. Now,
23 we've talked about what you did and didn't do
24 during those two minutes. But when we last went
25 through what you admitted to and what you didn't

1 admit to, you admitted that you cussed; is that
2 correct?

3 A. Yes.

4 Q. Now you're saying that you didn't use the
5 term "fuck," but you cussed. What terms were
6 you using?

7 A. "Bullshit."

8 Q. You used "bullshit"?

9 A. Yes.

10 Q. And you said that although you didn't think
11 you got angry, you say that because of your
12 size, people would think you were angry, right?

13 A. Yes.

14 Q. And I want to just look at a couple of
15 these slides and verify because of your size and
16 see. If we look at frame two minutes, 38
17 seconds, you're pointing at the manager, right?

18 A. Yes, because he said, "Sir, I will look
19 into it," and I turned and I said, "You better;
20 this is bullshit."

21 Q. And I would say that that supervisor is
22 much smaller than you, right?

23 A. Yes.

24 Q. You said he was a young kid?

25 A. Yes.

1 Q. Do you think the way you were turning
2 there, that might look a little aggressive?

3 A. Not to me.

4 Q. You turn around, you're pointing at him and
5 you're saying this is bullshit?

6 A. Yes.

7 Q. And this is two minutes and 38 seconds into
8 this altercation, right?

9 MS. GRAGEL: Objection.

10 MR. CAMPBELL: Objection? What
11 are we objecting to?

12 MS. GRAGEL: "Altercation."
13 There's been no testimony about an altercation.

14 BY MR. CAMPBELL:

15 Q. This is two minutes and 38 seconds into
16 this incident, correct?

17 A. Yes.

18 Q. So two minutes and 38 seconds you're still
19 saying this is bullshit and pointing at the
20 supervisor?

21 A. Yes.

22 Q. Now, if we turn to the next slide at 2:40,
23 you're giving a pretty aggressive scowl back
24 towards him as you're walking away, right?

25 A. Once again, this is how I look. I'm sorry,

1 you know.

2 Q. Are you smiling in that picture?

3 A. I never smile.

4 Q. You're laughing now. You're not smiling in
5 that picture, are you?

6 A. I'm laughing in the next picture.

7 Q. This took about -- you're not smiling, are
8 you?

9 A. No.

10 Q. You're walking away, you're turning at him
11 and you're glaring at him, right?

12 A. Yes.

13 Q. It's not real funny, is it, if you're him,
14 right? Is it?

15 A. No.

16 Q. Do you think he's laughing?

17 MS. GRAGEL: Objection.

18 BY MR. CAMPBELL:

19 Q. Let me ask you this: You didn't intend to
20 have him laugh at you, did you?

21 A. No.

22 Q. We asked what other people should have been
23 feeling and what people in this photo, you
24 intended to have him be a little intimidated by
25 you -- not a little, intimidated by you --

1 didn't you?

2 A. No, not really because that's the way I
3 look. I mean, sorry.

4 Q. Now, for two minutes you're at the cash
5 register, you admit that you cussed, right?

6 A. Yes.

7 Q. You admit you called her a thief?

8 A. Yes.

9 Q. You admit that you got loud?

10 A. The way I talk is loud, so --

11 Q. You admit it was loud?

12 A. Yes.

13 Q. So are we supposed to excuse you because
14 you're a loud person and others aren't?

15 MS. GRAGEL: Objection.

16 MR. FELDMAN: That's for me to
17 decide. Next question.

18 BY MR. CAMPBELL:

19 Q. And when we look through these photos, when
20 we start out at -- if we turn to page 1 again on
21 20 and 22, 23 seconds, 30 seconds -- I mean,
22 let's look at 30, can you tell whether anybody
23 else is in line or not at the 32 second mark?

24 A. No.

25 Q. We can't tell if anybody is in line or not.

1 A. There is no one behind me.

2 Q. We can't see anything -- it slices you in
3 half. We can't see anything to the left of you,
4 right?

5 A. Yes.

6 Q. And you're taking up the whole spot along
7 the wood, so it's pretty difficult to see if
8 there's three people behind you or not; is that
9 right?

10 A. Yes.

11 Q. And there is a salad bar there with people
12 at the salad bar, right?

13 A. There is a salad bar there, yes.

14 Q. Do you see people?

15 A. I see one person.

16 Q. If we look at 1:56, you see a bunch -- four
17 or five people at the salad bar?

18 A. Yes.

19 Q. So we've got a salad bar there, we've got
20 you for two minutes. So you're saying nobody
21 else came in the line for over two minutes of
22 you arguing with the manager and Ms. Hanson?

23 A. Yes.

24 Q. Nobody came? Nobody was coming through the
25 line?

1 **A.** No.

2 **Q.** Certainly people at the salad bar could see
3 and hear this altercation?

4 **MS. GRAGEL:** Objection --

5 **MR. FELDMAN:** Sustained.

6 **MS. GRAGEL:** -- to what they see
7 and hear and what the altercation was.

8 **MR. FELDMAN:** He doesn't know
9 what the other person --

10 **MR. CAMPBELL:** She's asked him
11 about what other people sitting in the cafeteria
12 thought.

13 **MS. GRAGEL:** And the objection
14 was sustained.

15 **MR. CAMPBELL:** She asked the
16 question. It wasn't sustained.

17 **MR. FELDMAN:** It was. Go on to
18 the next question.

19 **BY MR. CAMPBELL:**

20 **Q.** You're familiar with the cafeteria, right?

21 **A.** Yes.

22 **Q.** Big open space?

23 **A.** Yes.

24 **Q.** It's pretty easy to hear echoes and hear
25 people talking?

1 **A.** Yeah.

2 **Q.** And when we saw the video, there was
3 pointing at Ms. Hanson, wasn't there?

4 **A.** Not at Ms. Hanson, no.

5 **Q.** There was pointing when you were in line
6 before a manager came, right?

7 **A.** No. I would not -- I did not point at her.

8 **Q.** You admit that you cussed, right?

9 **A.** Yes.

10 **Q.** You were loud?

11 **A.** Yes, sir.

12 **MS. GRAGEL:** I'd object. Asked
13 and answered.

14 **MR. FELDMAN:** It's
15 cross-examination.

16 Continue, please.

17 **BY MR. CAMPBELL:**

18 **Q.** You called her a thief?

19 **A.** Yes.

20 **Q.** You called it to her, you called it to the
21 manager, and you were freely calling her a
22 thief, correct?

23 **A.** Yes.

24 **Q.** Now, just to verify, when you say you were
25 loud, you admitted the last time I

1 cross-examined you that you raised your voice.

2 A. I always raise my voice when I talk.

3 Q. Whether you always did or not, my question
4 is you raised your voice when you were calling
5 her a thief and cussing, isn't that correct?

6 A. I probably raised my voice, yes.

7 Q. Not probably, you recall that you did,
8 correct?

9 A. Yes.

10 Q. Now, you thought she had stolen five
11 dollars. You're a union steward, you're very
12 familiar with the cafeteria. Why not quickly
13 say, "I'd like to speak with your manager," go
14 speak with the manager, or raise it with someone
15 in the union?

16 A. She, within the first couple of seconds we
17 were there said, "I'm going to have to talk to
18 my manager."

19 I said, talk -- "get your manager," and
20 that's what we waited for.

21 Q. So it's your testimony you just stood there
22 quietly for two minutes?

23 A. Yeah, basically.

24 Q. Basically just stood there quietly?

25 A. I was waiting for the manager to come.

1 Q. And you're arguing with her.

2 A. I was talking to her, but I don't think I
3 was arguing.

4 Q. For two minutes if you're disagreeing and
5 you're calling her a thief, I think -- wouldn't
6 you agree that she might say that you were
7 arguing with her?

8 A. Okay.

9 Q. Would you agree?

10 A. Yes.

11 Q. If I sat there for two minutes and we timed
12 it and we are in a disagreement and I'm calling
13 you a thief, would you be happy with me?

14 A. I called her a thief one time.

15 Q. Whether you used the term thief, for two
16 minutes you were arguing with her about whether
17 you were owed 20 cents or \$4.20, correct?

18 A. Correct.

19 Q. You were demanding her manager come?

20 A. Yes.

21 Q. You wanted her to be disciplined.

22 A. I wanted her to find what the cause was,
23 not disciplined.

24 Q. If we sat downstairs at the Starbucks for
25 two minutes and I called you a thief and was

1 questioning whether you stole four dollars from
2 me, would you be happy?

3 A. No.

4 Q. Now, the manager comes, and at this point
5 more than two minutes into this you're still
6 turning, pointing to the manager and calling her
7 a thief and that this is bullshit?

8 A. Yes.

9 Q. Now, that night, even though you don't have
10 any redress, they tell you they're going to
11 review the video, right?

12 A. Yes.

13 Q. You don't go to your B.A.?

14 A. No.

15 Q. You don't tell UH about it?

16 A. No.

17 Q. You don't do written grievances or anything
18 about this stolen four dollars?

19 A. No.

20 Q. You kept it quiet until finally Gilbane
21 kicked you off the site?

22 A. Basically, I forgot about it until
23 Gilbane -- you know, four dollars is nothing.

24 Q. It's nothing. We sat for two minutes --
25 over two minutes and argued and you called her a

1 thief and cussed and pointed at a manager, and
2 that's nothing?

3 A. Not in the whole scope of the world, no,
4 it's not.

5 Q. Why didn't you just simply say, "I want to
6 see your manager; I want to talk to them"?

7 A. Two days after I talked to the manager, he
8 gave me a coupon. I thought it was over.

9 Q. My question to you is, you're saying today
10 that this four dollars was nothing. Why when
11 this happens don't you handle it as any other
12 customer would and go up to a manager and say,
13 "Hey, look I think I was short changed, let's
14 talk about it"?

15 A. We did.

16 Q. You did after you called her a thief, you
17 cussed and yelled, right?

18 MS. GRAGEL: Objection.

19 BY MR. CAMPBELL:

20 Q. Right?

21 MR. FELDMAN: You may answer.

22 MS. GRAGEL: He's misstating the
23 testimony, Mr. Arbitrator. The record will show
24 that.

25 MR. FELDMAN: He may answer. You

1 may answer the question. Do you understand the
2 question?

3 **THE WITNESS:** I would not -- I
4 was not yelling.

5 **BY MR. CAMPBELL:**

6 **Q.** I thought we just went through that you
7 admitted that you did raise your voice.

8 **A.** Okay, that's not yelling.

9 **Q.** So raising your voice is different?

10 **A.** I raised my voice.

11 **Q.** So to correct my statement, you talked to
12 the manager after calling her a thief, cussing,
13 raising your voice for over two minutes,
14 correct?

15 **A.** I don't think we were there for two minutes
16 talking to -- I was talking to the manager. If
17 I remember, I shook the manager's hand when he
18 walked over so it wasn't me and him having this
19 big altercation.

20 **Q.** You didn't shake his hand when you left,
21 did you?

22 **A.** No.

23 **Q.** You pointed at him?

24 **A.** Yes.

25 **Q.** Said "This is bullshit," right?

1 A. Uh-huh.

2 Q. And walked out?

3 A. Yes.

4 Q. Now, you've been a steward for all these
5 years, right?

6 A. Yes.

7 Q. Continued to work on sites where your
8 conduct has to be at the highest level. The
9 Institute of Art is quiet, people are in there
10 looking at art. It's not a place to yell and
11 cuss and raise your voice, right?

12 A. Yes.

13 Q. You understood that when you're on a
14 site -- as they say, when you're in Rome, you do
15 as the Romans do. When you're at UH or at the
16 Institute of Art, you've got to conform your
17 behavior to that work site, correct?

18 A. Yes.

19 Q. And you understand that over your three
20 years in the cafeteria -- how many years were
21 you in the cafeteria at UH?

22 A. Roughly three.

23 Q. Did you ever see anybody else over those
24 three years call a cashier a thief, raise their
25 voice and argue for two minutes about four

1 dollars?

2 A. I've seen people argue about money, yes.

3 Q. You see them for two minutes saying

4 "bullshit" and yell?

5 A. I don't pay attention. I just walk away.

6 Q. Was it your employees? Were they laborers?

7 A. No.

8 Q. So you weren't involved? You don't know if
9 they were kicked off or not?

10 A. Yes, sir.

11 Q. As we sit here with a high school coach, a
12 laborer, a foreman, a steward, you understood
13 that that conduct wasn't appropriate, didn't
14 you?

15 A. You're making it sound like I was screaming
16 and yelling. I just talked the way I usually
17 talked. There was no inappropriate action. I
18 didn't -- no.

19 Q. So it's your testimony that for a
20 two-minute argument, raising your voice, calling
21 her a thief and cussing is appropriate behavior
22 for a work site?

23 A. No, it's not.

24 Q. So you're admitting here to the arbitrator
25 that your conduct was not appropriate?

1 **MS. GRAGEL:** Objection.

2 **THE WITNESS:** You're telling me I
3 was screaming and yelling and everything like
4 this. You make it sound like I was being
5 aggressive. I was not if you look at it.

6 **BY MR. CAMPBELL:**

7 **Q.** Just so I'm clear, calling her a thief
8 several times, raising your voice, cussing and
9 arguing for over two minutes, is that
10 appropriate or not for a worker at UH?

11 **MS. GRAGEL:** Objection.
12 Misstates the testimony.

13 **BY MR. CAMPBELL:**

14 **Q.** Was your conduct appropriate that evening?

15 **MR. FELDMAN:** I told you I'll
16 decide it.

17 **MR. CAMPBELL:** If he admits that
18 it's not, I think that would be the end of this
19 arbitration. I can't imagine that I can't ask
20 him the ultimate question as to it.

21 **MS. GRAGEL:** Objection. It's
22 not whether the conduct is appropriate or
23 inappropriate, it's whether it's dischargeable.

24 **MR. FELDMAN:** Next question.

25

1 BY MR. CAMPBELL:

2 Q. Sir, as a steward -- and we've talked about
3 the Lerner household, you understood you had to
4 conform your behavior to the work site that
5 you're on, correct?

6 A. Yes.

7 Q. And if you violated it -- I'm not asking
8 you to admit that you violated it, but if you
9 violated what was expected of you, you could be
10 excluded from the work site, correct?

11 MS. GRAGEL: Objection.

12 MR. FELDMAN: You can answer. Do
13 you understand the question? If not, please
14 restate it.

15 MR. CAMPBELL: I'll restate.

16 BY MR. CAMPBELL:

17 Q. You understood if you were on the Lerner
18 household and you started yelling and screaming
19 and Mrs. Lerner said, "I don't want him here,"
20 that that would be appropriate for her to kick
21 you off the site, right?

22 A. Yes.

23 Q. No different than at UH. If you didn't
24 conform your behavior -- I'm not asking you to
25 admit it, but you understand that if you didn't

1 conform your behavior to what's expected of UH
2 visitors, employees, patients and their
3 relatives, that you could be excluded from the
4 UH campus, correct?

5 MS. GRAGEL: Objection. That's
6 the ultimate issue for the arbitrator, whether
7 that behavior, where it falls on the scale, is
8 dischargeable or not.

9 MR. CAMPBELL: Their whole
10 argument is that he somehow didn't know this.
11 If they didn't place that --

12 MR. FELDMAN: I'll have to decide
13 whether he knew it or not from the evidence in
14 the record.

15 MR. CAMPBELL: But I can't ask him
16 did he know and he says yes?

17 MR. FELDMAN: He says he doesn't
18 know it.

19 MR. CAMPBELL: No, he doesn't say
20 that.

21 MR. FELDMAN: He said he didn't
22 see the rules before working on --

23 MR. CAMPBELL: I'll lay a
24 foundation so we can get to it. I think we've
25 gone through it all.

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1 **MR. FELDMAN:** You don't have to
2 lay a foundation on cross-examination. But to
3 ask him the ultimate question that I have to
4 decide is something I'm not prepared to take as
5 part of the evidence in this case.

6 **MR. CAMPBELL:** If the grievant
7 says to you, "Mr. Arbitrator, I knew what's
8 expected of me, and, yes, I could be excluded,"
9 I think that would be --

10 **MR. FELDMAN:** I've taken notes on
11 that.

12 **BY MR. CAMPBELL:**

13 **Q.** Have you ever been disciplined for arguing
14 or violence in your time as a laborer?

15 **A.** No.

16 **Q.** Ever been excluded from any other work
17 sites --

18 **A.** No.

19 **Q.** -- due to behavior?

20 **A.** No.

21 **Q.** Have some of your laborers been excluded
22 from work sites due to their behavior?

23 **MR. FELDMAN:** To the best of your
24 knowledge.

25 **THE WITNESS:** To the best of my

1 knowledge, no.

2 BY MR. CAMPBELL:

3 Q. Over your 20 years, no laborer has ever
4 been excluded?

5 A. Not to the best of my knowledge. There
6 could have been a couple, but I don't --

7 Q. Could have been?

8 A. Could have been.

9 Q. But as a steward, you understood that if
10 your -- if your laborers violated the customs,
11 the work rules, the practices of the owner's
12 site, that they could be excluded, correct?

13 A. Yes.

14 MR. CAMPBELL: No further
15 questions.

16 MR. FELDMAN: Anything further of
17 this witness?

18 MS. GRAGEL: Just a moment.
19 We have no questions.

20 MR. FELDMAN: Let's take a
21 ten-minute recess.

22 (Thereupon, a recess was taken.)

23 ANTOIN ELEY

24 of lawful age, a witness herein, having been
25 first duly sworn, was examined and testified as

1 follows:

2 MR. FELDMAN: You have to talk
3 loud and clear because everything you say is
4 being taken down stenographically.

5 THE WITNESS: A-n-t-o-i-n
6 E-l-e-y.

7 MR. FELDMAN: Do you understand
8 that you're under oath?

9 THE WITNESS: Yes.

10 MR. FELDMAN: You're going to be
11 asked questions by Ms. Gragel and the attorney
12 for the respondent, the hospital. Do you
13 understand?

14 THE WITNESS: Yes.

15 MR. FELDMAN: You may inquire.

16 DIRECT EXAMINATION

17 BY MS. GRAGEL:

18 Q. What is your occupation?

19 A. Laborer.

20 Q. How long have you done that kind of work?

21 A. Ten years.

22 Q. Could you keep your voice up a little bit?

23 A. Ten years.

24 Q. Are you a member of Laborers Local 310?

25 A. Yes.

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1 Q. How long have you been a member of the
2 union?

3 A. For ten years.

4 Q. Were you hired to work at University
5 Hospitals Neonatal Intensive Care project?

6 A. Yes.

7 Q. About when were you hired, sir?

8 A. About January 7th or 8th.

9 Q. Of 2009?

10 A. Yes.

11 Q. On which contract of payroll were you
12 assigned?

13 A. Mark Rivera.

14 Q. Which contractor issued you your paychecks?

15 A. Rivera Construction.

16 MR. FELDMAN: Rivera?

17 THE WITNESS: Yes.

18 BY MS. GRAGEL:

19 Q. Who directed your work at the workplace?

20 A. Ozanne and Gilbane.

21 Q. Did Rivera Construction have any
22 supervision on the workplace?

23 A. I'm not sure who was -- their supervision,
24 no.

25 Q. What shift were you assigned to work?

1 A. Second shift.

2 Q. Did you work with Mike Harting?

3 A. Yes.

4 Q. How many other laborers were in your second
5 shift crew?

6 A. Four. Other than -- two more with us, so
7 four.

8 Q. Do you remember the names of the other crew
9 members?

10 A. Yes.

11 Q. Who were they?

12 A. Mark and Brandon.

13 Q. Where did your crew take their breaks?

14 A. Either in the break room or the lunchroom.

15 MR. FELDMAN: Break room -- what
16 was the second half of that?

17 THE WITNESS: Break room or the
18 cafeteria.

19 BY MS. GRAGEL:

20 Q. Did you take breaks with Mr. Harting?

21 A. Yes.

22 Q. What kind of food or beverage did you see
23 him purchase on breaks?

24 A. He'd get like chips and water.

25 Q. During the time that you worked at the job

1 in the first part of January, where was the
2 break room?

3 A. In our work area.

4 Q. And that would have been on the NICU
5 grounds?

6 A. On the NICU grounds, yes.

7 Q. Was it demo'd?

8 A. Yes.

9 Q. Was it demo'd while Mr. Harting was still
10 working on the site?

11 A. Yes.

12 Q. When your crew went to eat dinner in the
13 cafeteria, did you see other tradesmen there?

14 A. Yes.

15 Q. Carpenters?

16 A. Yes.

17 Q. Did you receive any instructions before
18 January 27, 2009 to refrain from eating in the
19 cafeteria?

20 A. No.

21 Q. Do you know, sir, that this incident that
22 led to the arbitration here took place on or
23 around January 27, 2009?

24 A. Yes.

25 Q. I'd like to have you look at that time.

1 Do you remember going to the cafeteria for
2 dinner with Mr. Harting on January 27th?

3 A. Yes.

4 Q. Who went through the line first?

5 A. I did.

6 Q. Where did you go to sit down?

7 A. A few tables back from the exit where you
8 pay for your dinner.

9 Q. I'm going to hand you, sir, what's been
10 marked as Union Exhibit 4 which are photographs
11 of the cafeteria. The first page has the mark
12 in the upper left corner, 19 seconds. Do you
13 see that, sir?

14 A. Yes.

15 Q. Would you hold that up for the arbitrator
16 and show where you remember going to sit?

17 A. Probably was like a few tables back from
18 these tables. (Indicating.)

19 MR. FELDMAN: Off the picture?

20 THE WITNESS: Yes, off the
21 picture.

22 BY MS. GRAGEL:

23 Q. Did you see Mr. Harting as he came through
24 the line?

25 A. Yes.

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1 Q. As he was coming through the line, did you
2 hear him say anything to anybody?

3 A. No.

4 Q. When he came to the table, was he carrying
5 food?

6 A. Yes.

7 Q. How did he appear?

8 A. Just like a normal day. He came and sat
9 down.

10 Q. Did he say anything about what had happened
11 in the cafeteria line?

12 A. He said there was a dispute about his
13 change and sat down.

14 Q. When he told you about that, did he use any
15 racially derogatory terms?

16 A. No.

17 Q. Did you hear him use the "N" word?

18 A. No.

19 Q. Did he use any profanity when he told you
20 about the change situation?

21 A. No.

22 Q. Did you stay in the cafeteria for the rest
23 of the dinner break?

24 A. Yes.

25 Q. Did anyone come to the table to talk to

1 Mr. Harting that you remember?

2 A. No.

3 Q. After January 27th, 2009, did anyone from
4 University Hospitals ask to speak with you about
5 what you saw or heard or remembered from January
6 27?

7 A. No.

8 Q. Did anyone from Gilbane Construction come
9 and ask you to describe what took place on
10 January 27th?

11 A. No.

12 Q. During the time that you worked at the
13 University Hospitals NICU project between early
14 January and January 29th, 30th, that time frame,
15 did you work closely with Mr. Harting?

16 A. Yes.

17 Q. Did you work with him every day?

18 A. Yes.

19 Q. Did you work with him in the same work
20 areas?

21 A. Yes.

22 Q. How did he conduct himself?

23 A. Like a gentleman. We worked together side
24 by side. We never had any problems.

25 Q. Did he make any racially discriminatory or

1 harassing remarks in your presence?

2 A. No.

3 Q. Did you continue to work at the workplace
4 after Mr. Harting was removed from the job site?

5 A. Yes.

6 Q. About how long did you keep working at the
7 University Hospitals NICU project?

8 A. A few more months after January.

9 Q. Did you work straight time and overtime?

10 A. Yes.

11 Q. Before we came into the room here today,
12 did you have a chance to look with me at Union
13 Exhibit 5?

14 A. Yes.

15 Q. Does Union Exhibit 5, sir, match the pay
16 that you received for the hours that you worked
17 at the job site in January, February and March,
18 2009?

19 A. Yes.

20 MS. GRAGEL: I have nothing
21 further.

22 MR. FELDMAN: Thank you. You may
23 inquire.

24 CROSS-EXAMINATION

25

1 BY MR. CAMPBELL:

2 Q. Mr. Eley, when did your work at the NICU
3 unit end?

4 A. Beginning of -- first of June, I think.

5 Q. The first of June you were laid off?

6 A. Yes.

7 Q. Where are you working now?

8 A. That might have been May. It was May.

9 Q. The first of May?

10 A. Yeah, I was working until May.

11 Q. So you worked --

12 A. All the way through until May.

13 Q. How many laborers -- did you continue to
14 work that same shift?

15 A. No.

16 Q. What shift did you move to?

17 A. First.

18 Q. When did you move from that third shift?

19 A. I'm not sure exactly when it was, but it
20 was maybe the last two months.

21 Q. The last two months?

22 A. Yes.

23 Q. If the first week of May you left, then
24 we're talking about really --

25 A. Maybe like April and May.